

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0602, PC Production Temps, Inc. v. Abatement International, Inc./Advatex Associates, Inc., the court on May 31, 2007, issued the following order:

The defendant, Abatement International, Inc./Advatex Associates, Inc. (Abatement) appeals an order by the trial court finding an implied in fact contract between it and the plaintiff, PC Production Temps, Inc. Abatement argues that the trial court erred because a previous appeal to this court had established that the record did not support a finding of an implied contract and because the evidence cited by the trial court did not establish an implied in fact contract. We affirm.

An implied in fact contract is a contract that is not expressed in words; the terms of the parties' agreement must be inferred from their conduct. Morgenroth & Assoc's, Inc. v. Town of Tilton, 121 N.H. 511, 514 (1981). The plaintiff bears the burden of producing evidence to establish the intention of the parties, the nature and extent of their obligations and their respective rights. Maloney v. Company, 98 N.H. 78, 81 (1953). The meeting of the minds or concurrence of the parties is ascertained by what they say or do, by their overt acts, by what they give each other to understand and not by any undisclosed meaning or intention that one of the parties might have had. Id.

The existence of an implied in fact contract is a question of fact. Kane v. N.H. State Liquor Comm'n, 118 N.H. 706, 708 (1978). That a reading of the record might lead to a different conclusion on questions of fact is not sufficient reason to reverse the decision of the trial court; our standard of review is whether the finding could be made on all of the evidence. Id. at 708-09.

In Case No. 2005-0086, a previous appeal by the same parties on the same issue, we concluded that the trial court had erred in determining that conversations between the plaintiff's owner and the defendant's president were irrelevant to a determination of whether a contract in fact was established. We vacated the trial court's order and remanded the case for additional findings and rulings on that issue. To the extent that the defendant argues that the analysis in our remand order barred the trial court from finding a contract implied in fact, we disagree. Many of the findings cited by the trial court in its subsequent order are related to the contacts between the plaintiff's owner and the defendant's president, the specific issue cited in our remand order.

Nor do we agree that less deference should be given to the trial court's

determinations of credibility because the plaintiff's owner testified by videotape deposition. As the defendant notes, its president testified in person. The trial court declined to believe his representation of the parties' relationship.

Having reviewed the record before us, we find no error in the trial court's ruling. See Kane, 118 N.H. at 708-09.

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**